

1 LUANNE SACKS (SBN 120811)
2 Email: lsacks@sackrickettscase.com
3 **SACKS, RICKETTS & CASE, LLP**
4 1900 Embarcadero Road, Suite 110
5 Palo Alto, CA 94303
6 Phone: 415.494.4950
7 Fax: 415.847.1520

5 CYNTHIA A. RICKETTS (*Admitted Pro Hac Vice*)
Email: cricketts@sacksrickettscase.com
6 **SACKS, RICKETTS & CASE, LLP**
2800 North Central Avenue, Suite 1230
7 Phoenix, AZ 85004
Phone: 602.385.3370
8 Fax: 602.385.3371

9 Attorneys for Defendant
Massage Envy Franchising, LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

13 GAIL HAHN, individually and on
14 behalf of all other similarly situated
California residents.

15 Plaintiff,

16 ||

17 MASSAGE ENVY FRANCHISING,
18 LLC, a Delaware limited liability
company;

19 Defendants.

| Case No. 12-CV-153-DMS (BGS)

**NOTICE OF MOTION AND
MOTION TO DISMISS THE FIRST
AMENDED CLASS ACTION
COMPLAINT PURSUANT TO FED.
R. CIV. P. 12(b)(1), (6), (7), and 19**

The Hon. Dana M. Sabraw

Hearing Date: August 9, 2013
Hearing Time: 1:30 p.m.
Courtroom: 13A

**TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD
HEREIN:**

23 PLEASE TAKE NOTICE that on August 9, 2013, at 1:30 p.m., or as soon
24 thereafter as counsel may be heard, in Courtroom 13A of the above-entitled court,
25 located at 221 West Broadway, San Diego, CA 92101, Defendant Massage Envy
26 Franchising, LLC (“MEF”) will and hereby does move this Court to dismiss with
27 prejudice the First Amended Class Action Complaint [Doc. 36] pursuant to Federal
28 Rules of Civil Procedure 12(b)(1), (6), (7), and 19.

1 MEF brings this Motion because Plaintiff Gail Hahn (“Hahn”) lacks standing
2 under Federal Rules of Civil Procedure 12(b)(1) to bring her First Amended Class
3 Action Complaint (the “FAC”). MEF also brings this Motion under Federal Rules
4 of Civil Procedure 12(b)(7) and 19 as Hahn has failed to join necessary and
5 indispensable parties. Finally, MEF brings this Motion because, pursuant to
6 Federal Rules of Civil Procedure 12(b)(6), the FAC fails to state claims upon which
7 relief may be granted.

8 For each of these reasons, MEF requests this Court dismiss with prejudice
9 Hahn's claims under the unlawful and unfair prongs of the Business & Professions
10 Code § 17200, for breach of the implied covenant of good faith and fair dealing,
11 and for declaratory relief.

12 This Notice of Motion and Motion is based upon the attached Memorandum
13 of Points and Authorities, the records and pleadings on file in this action, and on
14 such further evidence, either oral or documentary, presented to this Court at the
15 motion hearing.

16 || Dated: July 12, 2013

DLA PIPER LLP (US)

By s/Cynthia A. Ricketts
LUANNE SACKS
Email: lsacks@sacksrickettscase.com
CYNTHIA A. RICKETTS
Email: cricketts@sacksrickettscase.com
Attorneys for Defendants
Massage Envy Franchising, LLC